

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Federal Communications Commission  
Office of the Secretary

Redevelopment of Spectrum to )  
Encourage Innovation in the Use of )  
New Telecommunications Technologies )

ET Docket 92-9

TO: The Commission

RESPONSE OF AMERICAN PERSONAL COMMUNICATIONS  
TO REPLY OF ASSOCIATION OF AMERICAN RAILROADS,  
LARGE PUBLIC POWER COUNCIL, AND  
AMERICAN PETROLEUM INSTITUTE

American Personal Communications ("APC")<sup>1/</sup> responds to the Reply to APC's Opposition to the "Petition to Suspend Proceeding" filed by the Association of American Railroads, the Large Public Power Council, and the American Petroleum Institute (collectively, "Incumbents").

Incumbents correctly point out that APC agrees with the central substantive matter raised in Incumbents' Petition to Suspend -- that shared use of the 1.71-1.85 GHz band for federal and private fixed microwave users should be explored by the Commission and the National Telecommunications and Information Administration ("NTIA").<sup>2/</sup> The Commission has initiated the process demanded by Incumbents. See Letter from

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<sup>1/</sup> American PCS, L.P., d/b/a American Personal Communications. Pursuant to Section 1.405(c) of the Commission's Rules, 47 C.F.R. § 1.405(c) (1991), APC hereby seeks leave to file this Response, which is necessary because of matters raised for the first time in Incumbents' Reply.

<sup>2/</sup> APC stated its agreement with Incumbents' proposal in APC's Opposition and in APC's Comments on the Petition for Rule Making filed by the Utilities Telecommunications Council.

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the Commission to Hon. Ernest F. Hollings, April 20, 1992 (en banc). This is a positive and constructive development that APC supports.<sup>3/</sup> In large part, the relief demanded by Incumbents effectively has been granted by the Commission. Given the Commission's responsiveness to Incumbents' concerns, there certainly is no need to "suspend" this proceeding.

A lengthy rejoinder to Incumbents' Reply is not required, but a few obvious points must be corrected.

First, APC supports the Commission's current investigation of the 1.71-1.85 GHz band but disagrees with Incumbents that the Commission is required to perform a study of that band by the Administrative Procedure Act ("APA").<sup>4/</sup> Incumbents' legal argument that the APA requires the Commission to "fully investigate" the 1.71-1.85 GHz band to Incumbents' subjective satisfaction is, at best, highly overstated. The APA requires only that an agency consider proposals "duly submitted during the notice and comment proceedings that would advance its stated goal."<sup>5/</sup> The APA

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<sup>3/</sup> APC cannot, of course, endorse the rhetoric used by Incumbents to characterize APC's support for this proposal. In particular, APC does not believe that the Commission's current proposal is "disruptive" at all, and APC does not believe that relocating incumbents to the 1.71-1.85 GHz band necessarily would be "more rapid" than relocating incumbent users to higher frequency bands. See Incumbents' Reply at 2.

<sup>4/</sup> Contrary to Incumbents' Reply, APC did not, of course, concede Incumbents' APA argument merely because APC did not specifically discuss that argument. See Reply at 2-3.

<sup>5/</sup> See Office of Communication of the United Church of Christ v. Federal Communications Comm'n, 779 F.2d 702, 704 (D.C. Cir. 1985) (radio deregulation); see also Motor Vehicle

does not empower individual litigants to dictate the conduct of an agency's proceedings and direct the production of desired reports by the agency's staff. The validity of Incumbents' legal argument need not be resolved now, however, because the Commission is appropriately investigating the utility of federal/private sharing of the 1.71-1.85 GHz band.

Second, APC does not "concede" that parties should comment on the appropriateness of the 1.71-1.85 GHz band for PCS. See Reply at 7 n.7. Incumbents, not APC, raised the question of use of this band for PCS; APC simply opposes Incumbents' suggestion in this regard.

Third, APC does not believe, as Incumbents seem to imply, that use of the 1.71-1.85 GHz band could cause the federal government to lose control of an inordinate amount of spectrum. APC merely raised the relevance of Senate Bill 218 to Incumbents' request -- a topic left completely unanalyzed by Incumbents' Petition -- and pointed out the importance of including the legislative branch in any negotiations with NTIA concerning shared use of the 1.71-1.85 GHz band. APC agrees that S. 218 does not pose a "barrier" to use of the 1.71-1.85 GHz band, but believes that pending legislation concerning federal spectrum certainly is relevant to whether and on what conditions that spectrum may be made available for shared use.

\* \* \*

We regret that Incumbents have chosen to distort the positions taken by APC in this matter. The fact is that the 1.85-1.99 GHz band -- a spectrum resource of vast potential benefit to the American public -- lies largely fallow. It is partially used by groups represented by Incumbents, which are clinging to all of the band despite the fact that that position so plainly disservices the public interest. APC has proposed in concrete and specific terms a technology for sharing and a system for voluntary, fully reimbursed relocation that meets all of Incumbents' reasonable needs. It also has supported the basic thrust of Incumbents' request that the Commission investigate shared use of the 1.71-1.85 GHz band. Yet, despite APC's efforts to seek a fair accommodation of Incumbents' interests, Incumbents seem bent on trying to discredit APC. We believe a spirit of cooperation would better serve the interests of all involved.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

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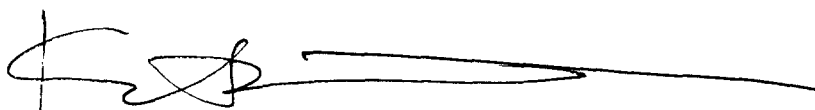
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